



THEORIES OF SOVEREIGNTY AND CONSTITUTIONALISM

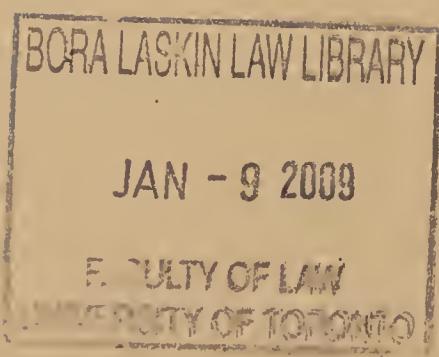
INTENSIVE COURSE

Visiting Professors Andrew Arato and Jean Cohen

January 2009

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Theories of Sovereignty and Constitution

Professor Andrew Arato and
Professor Jean Cohen
Room FA1

January 5-16 2009
University of Toronto Law School

Blurb:

Books

1. H.L.A. Hart, The Concept of Law
2. Hans Kelsen, General Theory of Law and the State (paper)
3. Carl Schmitt, Constitutional Theory (Durham: Duke University Presss, 2008)
4. Carl Schmitt, Political Theology (Chicago: University of Chicago Press 2005)

1. The Crisis of the Classical Concept of Sovereignty: Three 20th Century Solutions

*Carl Schmitt, Political Theology, pp. 5-52

*Hans Kelsen, “Sovereignty” from Stanley Paulson and Bonnie Litschewski Paulson (eds.), Normativity and Norms (Oxford: Clarendon, 1998), pp. 525-36

H.L.A. Hart, The Concept of Law, Chapter IV, “Sovereign and Subject”, pp.50-78.

2. The Concept of Constitution and Constituent Power: Kelsen

*Hans Kelsen, General Theory of Law and the State, 110-128, 258-261

3. The Concept of Constitution and Constituent Power: Schmitt

*Carl Schmitt, Constitutional Theory, pp. 60-82, 97-135, 140-146, 150-158, 239-252

4. Sovereignty and International Law From Kelsen to Hart

*Kelsen General Theory, 325-391

*Hart, “Kelsen’s Doctrine of the Unity of Law”, in H.L.A. Hart, Essays in Jurisprudence and Philosophy, (Clarendon), 309-342

*Hart, The Concept of Law, 79-123

5. Sovereignty and the Problem of Federations

* Kelsen, General Theory of Law and State, 303-328

* Schmitt, Constitutional Theory, 382-407

6. The Question of a European Constitution: Is There a Constitution?

- *Habermas, “Why Europe Needs a Constitution” (19-35);
- *Grimm “Treaty or Constitution?” (69-88) and
- *Brunkhorst, “A Polity without a State?” (88-107)
- in Eriksen, Fossum and Menendez Developing a Constitution for Europe
- *Weiler, “On the Power of the Word: Europe’s Constitutional Iconography” in ICON VOL.1, No. 2&3, may 2005, 174-190

7. Constitutional Pluralism and Global Constitutionalism

- *Miguel Poiares Maduro, “Contrapunctual Law: Europe’s Constitutional Pluralism in Action” (501-538) in Walker, ed, Sovereignty in Transition
- * Massimo la Torre Legal Pluralism as Evolutionary Achievement of Community Law Ration Juris vol 12. no. 2 june 1999 182095
- *Bardo Fassbender, “Sovereignty and Constitutionalism in International Law” in Walker, ed., Sovereignty in Transition, 115-140;
- *Matthias Kumm, “The Legitimacy of International Law: A Constitutional Framework of Analysis”, EJIL 15/5 2004
- *Jean Cohen, “A Global State of Emergency of the Further Constitutionalisation of International Law: a Constitutional Pluralist Approach” in Constellations15/4, 2008 (forthcoming)

Recommended

- *Neil Walker, “The Idea of Constitutional Pluralism”, in The Modern Law Review, Vol.65 May 2002, No.3, pp. 317-359
- *Miguel Poiares Maduro, “Contrapunctual Law: Europe’s Constitutional Pluralism in Action” (501-538) in Walker, ed, Sovereignty in Transition